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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,473	02/18/2004	John Radkowski	RAD01	3126

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EXAMINER

CHHABRA, ARUN S

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/781,473	Applicant(s) RADKOWSKI ET AL.	
	Examiner Arun S. Chhabra	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 23 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to applicant's amendment received on June 23, 2006.

Claim Objections

Claim 1 is objected to because of the following informalities: There are two periods instead of one at the end of claim 1 leading one to believe it could be and ellipsis which would not be proper claim format. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US Patent Number 6,270,448) in view of Albergo (US Patent Number 5,536,229).

Smith discloses a leg stretch exercising device with an elongate support member 14 having upper and lower free extents and through which a longitudinal axis passes. Smith also discloses a truss member 22 that supports the lower extent of the longitudinal body in an upright position via a tripod configuration.

The leg stretch exercising device also has multiple cross members 72 and 56 which are attached at the upper part of the support member and disposed in a cantilever fashion, preventing their rotation. The cross members have limb support portions, 78 and 60 respectively, which have a curvature that a user's limb can be

supported on. The limb support portion of cross members 72 and 56 are both integral with their respective cross members and the cross member 72 is integral with a cross bar clamp 73 that fastens the cross bar to the support member.

Thus, Smith discloses the claimed invention except for the one or more intussusceptible portions. Albergo teaches that it is known to use one or more intussusceptible portions as set forth in column 3, lines 27-50 to provide height adjustment of the apparatus. In addition, a clamping member 20 is used to tighten and loosen the portions so that they can be adjusted. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the leg stretch apparatus as taught by Smith, with intussusceptible portions as taught by Albergo, since such a modification would provide the leg stretch apparatus with intussusceptible portions for adjusting the height of the apparatus.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Albergo as applied to claims 1 and 2 above, and further in view of Johnston (US Patent Number 2,469,301).

Smith and Albergo disclose the claimed invention except for the rotatable handle. Johnston teaches that it is known to use a rotatable handle as set forth in column 1, lines 40-60 to engage and disengage a height adjustment portion to prevent or not prevent it from moving. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the stretching exercise device as taught by Albergo, with a rotatable handle as taught by Johnston, since such a modification would provide the stretching exercise device with a rotatable handle to

engage or disengage a height adjustment apparatus and thus either prevent it from movement or allow it to move.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Albergo as applied to claim 1 above and further in view of Tarulli (US Patent Number 6,343,998).

Smith discloses the claimed invention except for the slidable leg connector. Tarulli teaches that it is known to use a slidable leg connector as set forth in column 3, lines 1-13 to collapse an apparatus. Tarulli discloses a leg connector which is slidable with respect to a lower part of the support member. Thus the leg connector can slide up the support member when retractability of the apparatus is required. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the leg stretch exercising device as taught by Smith, with slidable and retractable leg connector as taught by Tarulli, since such a modification would provide the leg stretch exercising device with a slidable leg connector for collapsing the apparatus.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Albergo as applied to claim 1 above, and further in view of Duba (US Patent Number 5,997,448).

Smith discloses the claimed invention except for the slidable limb support portion. Duba teaches that it is known to use a slidable limb support portion 54 as set forth in column 4, line 65 – column 5, line 20. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the leg stretch exercising device as taught by Smith, to make limb support portion 60 slidable along 58

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which is taught by Duba, since such a modification would provide the leg stretch device with a slidable limb support portion so that stretching could occur from multiple locations.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Albergo as applied to claim 1 above, and further in view of Tarulli et al. (US Patent Number 6,343,998).

Smith and Albergo disclose the claimed invention except for the horizontal telescoping members. Tarulli teaches that it is known to use horizontal telescoping segments as set forth in column 3, lines 25-50 to increase the horizontal length of the apparatus. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the leg stretch exercise apparatus as taught by Smith, with horizontal telescoping members as taught by Tarulli, since such a modification would provide the leg stretch apparatus with horizontal telescoping members for allowing the horizontal length of the apparatus to be adjusted.

In regards to claim 9, Tarulli discloses the modification to the invention of Smith except for the clamping member to lock the telescoping members in place. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the horizontal telescoping members as taught by Tarulli, with clamping members since it was known in the art that clamping members are used to tighten and loosen telescoping members. Additionally, since Applicant has disclosed that clamping members are used to lock or release the longitudinal telescoping members it would be obvious to apply a similar method of locking or releasing horizontal telescoping

members and since there was a known reference (US 5,536,229) which showed that a clamp for longitudinal telescoping members are known in the art, then the same reference can be used to reject claim 9 on the basis that a similar clamping member can be used to lock or release horizontal telescoping members.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Albergo as applied to claim 1 above and further in view of McLeon (US Patent Number 5,518,476).

Smith and Albergo disclose the claimed invention except for the visual or tactile indicia. McLeon teaches that it is known to use such indicia on an exercise apparatus as set forth in column 10, lines 5-64 to allow the user to manually adjust settings and to give the user feedback during the use of the apparatus. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the leg stretch apparatus as taught by Smith, to have indicia as taught by McLeon, since such a modification would provide the leg stretch apparatus with visual or tactile indicia for giving the user feedback during their use of the apparatus and for allowing the user to change settings of the apparatus.

Response to Arguments

Applicant's arguments filed on June 23, 2006 with respect to claims 1-3, 5, 6, and 8-10 have been fully considered but they are not persuasive. In regards to Applicant's argument that the cross member of Smith is not located at the upper free extent of the longitudinal member, Examiner asserts that the location of the cross member is considered to be in the upper free extent area of the longitudinal member. The upper

free extent is a general statement and thus the upper free extent is considered to be any portion of the longitudinal member that is closer to the top rather than the bottom. If Applicant were to clarify the location of the cross member in the claim by saying that it is at the very top of the longitudinal member forming a capital T-shaped shape, and have reason as to why the cross member in this configuration would perform better than the cross member in Smith's configuration, then Applicant would overcome the prior art rejection of record.

In response to Applicant's argument about the handles 56 supporting a limb, Applicant should note the definition of a limb from www.dictionary.com, that being "one of the jointed appendages of an animal used for locomotion or grasping". Thus, handle 56 is capable of supporting a limb, because a user's hand is considered to be a limb and as stated in the Specification of Smith, the handles 56 are used to support a user's hands.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed

invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Thus, since Smith teaches the height adjustment feature of 73, which in and of itself is an intussusceptible portion, it would be obvious to incorporate the telescopic height adjustment mechanism of Albergo into Smith. It would just be a different way of providing the height adjustment feature of Smith so that user's of different heights could perform different stretches.

In response to Applicant's argument about the rotatable handle, it should be noted that once Smith and Albergo are combined, you have a telescopic leg stretch exercising device that uses a pin mechanism to lock the telescopic portions in place. Thus, Johnston teaches the use of a rotatable handle to lock telescopic and intussusceptible portions in place and one of ordinary skill in the art could easily replace the pin mechanism of Albergo with the rotatable handle and screw mechanism of Johnston to achieve the invention as claimed.

In response to applicant's argument regarding the rejection of claims 8 and 9, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Thus, the Tarulli reference is only used to show the teaching of horizontal telescoping

members which can adjust the length of an upper horizontal cross member. More specifically, the telescopic members being used to incorporate into cross member 58 of Smith extend from reference number 59 on one side to 59 on the other of Tarulli. Contrary to Applicant's claim, a limb support portion can easily be provided on top of point 59 on each side of the horizontal member. The height adjustment capability and swing arms have nothing to do with the teaching of the telescopic horizontal cross members as reference number 51 of Tarulli could replace reference number 58 of Smith to achieve the claimed invention.

In response to Applicant's arguments concerning claim 10, it should be noted that placing visual and tactile indicia on exercise devices are commonly known in the art and aren't patentable features. Additionally, they are taught by McLeon. Applicant does not disclose the function or specific purpose of the visual and tactile indicia in the claims and thus any exercise device with visual or tactile indicia is suitable for overcoming the claimed invention of Applicant.


Applicant's arguments with respect to claims 4 and 7 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arun S. Chhabra whose telephone number is 571-272-7330. The examiner can normally be reached on M-F 9:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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PRIMARY EXAMINER
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